

Inspector's supplementary note: Welsh medium education

Matter 1: Plan preparation, vision & objectives

Matter 2: Plan strategy, delivery and infrastructure

Purpose and limitations of this note

1. This note sets out my initial observations on Welsh medium education funding and provision in the context of:
 - Issue 1.1: Preparation and procedural requirements
 - Issue 2.2: Delivery and infrastructure, and
 - Issue 2.3: Planning obligations (policy SW9).
2. The note responds to written statements submitted by Rhondda Cynon Taf County Borough Council ('RCTCBC') and Merthyr Tydfil County Borough Council ('MTCBC') and aims to facilitate discussions with those parties at hearings 1 and/or 2. I do not seek any written responses other than from MTCBC, as identified in this note.
3. The observations in this note are purely my initial views. They are offered without prejudice to the examination or my assessment of soundness or procedural compliance.

Legislative and policy context

4. In May 2018 responsibility for the Community Infrastructure Levy (CIL) was passed to the Welsh Government¹. The UK Government has since made amendments to the CIL Regulations which will take effect in September, but only in England. Thus, my current understanding is that for the foreseeable future the regulations applying in Wales will remain the CIL Regulations 2010 as most recently amended in 2018.
5. Although CIL is now a devolved matter, in the absence of other guidance the UK Government's Planning Practice Guidance (PPG) has some relevance to Wales insofar as it provides advice in relation to the application of the CIL Regulations 2010. I have therefore had regard to it.

Restrictions on securing section 106 contributions

6. CIL Regulation 123(2) states:

"A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure."

7. The PPG (reference ID 25-097-20190315) interprets this as follows:

"Where the regulation 123 list includes a generic type of infrastructure (such as 'education' or 'transport'), section 106 contributions should not be sought on any specific projects in that category. Site-specific contributions should only be sought where this can be justified with reference to the underpinning evidence on infrastructure planning which was made publicly available at the charging schedule examination."

¹ Government of Wales Act 2006 (as amended by the Wales Act 2017); Welsh Ministers (Transfer of Functions) Order 2018

8. In this case I note that 'Education Provision' is included as an item on MTCBC's regulation 123 list². MTCBC's ability to collect s106 contributions towards education provision are therefore substantially restricted. Whilst I am willing to hear evidence to the contrary, it seems to me that amending the wording of policy SW9 itself to seek s106 contributions towards education provision, even to a specific education project, runs a high risk of not being deliverable and, consequently, not sound.

Effects of the Plan on the use of the Welsh Language

9. Notwithstanding the above, section 62(6A) of the Planning and Compulsory Purchase Act 2004 states that Sustainability Appraisals (SAs) "must include an assessment of the likely effects of the plan on the use of the Welsh language in the area of the authority".
10. The SA framework includes an objective "to facilitate services and facilities that support distinctive local culture and the Welsh language". However, whilst the SA Report concludes that the Plan may result in "additional potential pupils" for Welsh medium primary schools located within MTCBC, and mentions the secondary school in RCTCBC, it is somewhat silent on the effects on secondary provision³. This is surprising given that an increase in pupils in Welsh medium primary education in MTCBC would presumably result in a consequent increase in pupils attending Welsh medium secondary education locally. This is a potential effect of the Plan that I would expect to be considered in the SA.

Actions required from MTCBC

11. In light of the above observations I request that MTCBC submits to the examination:
- The current CIL Regulation 123 list, and
 - The infrastructure evidence which originally underpinned the CIL charging schedule.
12. I also ask MTCBC to consider in advance of hearings 1 and 2:
- Firstly, whether secondary Welsh medium education was addressed in the SA and whether the SA Report should be amended to identify any impacts in this regard.
 - Secondly, having regard to the SA, the CIL Regulations, the CIL infrastructure evidence and any potential future changes to MTCBC's CIL Regulation 123 list, whether additional reasoned justification relating to policy SW9 criterion 4 should be added to the Plan to clarify the position in relation to secondary Welsh medium education, and specifically the circumstances under which necessary contributions towards Welsh medium secondary education might be sought and secured in the future, subject to compliance with CIL Regulations or any successor regulations.
 - Thirdly, whether any amendments to the Infrastructure Schedule are necessary.
13. If, on reflection, MTCBC considers that changes are needed to the SA and/or Plan, it should briefly summarise these in a supplementary written statement to be submitted by close of business on Friday 21 June. Alternatively, if it decides that verbal evidence provided at hearings 1 and 2 would suffice, I am content to proceed on that basis.
14. Resources permitting, I would encourage MTCBC and RCTCBC to engage with one another in advance of the hearings to establish areas of common and uncommon ground in relation to the matters raised in this note.

Paul Selby

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² Para 2.12 of Infrastructure Schedule [ED007a]

³ SA Report paragraph 9.10 [SD06]